

ESTTA Tracking number: **ESTTA541799**

Filing date: **06/05/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Mr.FranciscoVila
Granted to Date of previous extension	06/19/2013
Address	2954 Kimmeridge Drive Atlanta, GA 30343 UNITED STATES
Attorney information	Samuel B. Morrison MORRISON LAW OFFICES, P.C. 25 Atlanta Street Suite D Marietta, GA 30060 UNITED STATES sam@morrisonfranchiselaw.com Phone:7707940399

Applicant Information

Application No	85719231	Publication date	02/19/2013
Opposition Filing Date	06/05/2013	Opposition Period Ends	06/19/2013
Applicants	<p>VanNess, William 426 Catalina Drive Mooresville, NC 28117 UNITED STATES</p> <p>VanNess, Nicole 426 Catalina Drive Mooresville, NC 28117 UNITED STATES</p>		

Goods/Services Affected by Opposition

<p>Class 021. All goods and services in the class are opposed, namely: Beer mugs; Beverage glassware; Cups and mugs; Glass mugs; Mugs; Mugs, not of precious metal; Porcelain mugs</p>
<p>Class 025. All goods and services in the class are opposed, namely: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic shirts; Baseball caps and hats; Gift packages sold as a unit consisting primarily of a sweatshirt and also including a photo frame, a coffee mug, and a tote bag; Golf shirts; Hats; Hooded sweat shirts; Party hats; Polo shirts; Shirts; Shirts and short-sleeved shirts; Short-sleeved shirts; Sleep shirts; Sport shirts; Sports caps and hats; Sweat shirts; T-shirts; Toboggan hats, pants and caps</p>

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85871226	Application Date	03/08/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ALE YEAH!		
Design Mark			
Description of Mark	The mark consists of The words "ALE" and YEAH!" in all capital letters, with the letter "A" in the second word inverted, with a flame emanating therefrom.		
Goods/Services	Class 035. First use: First Use: 2012/08/01 First Use In Commerce: 2012/08/01 retail store services featuring beer,growlers, glassware, clothing and other beer-related merchandise		

U.S. Application No.	85870668	Application Date	03/08/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ALE YEAH! CRAFT BEER MARKET BE TEMPTED.		
Design Mark			
Description of Mark	The mark consists of The words "ALE" and "YEAH!" in all capital letters, under a line, with the letter "A" in the second word being orange and inverted, with a flame depicted as emanating from that inverted letter, over a second line, which has the words "CRAFT BEER MARKET" are in all capital letters of a smaller size, over a third line, which the words "Be Tempted." appear in a smaller font.		
Goods/Services	Class 035. First use: First Use: 2012/08/01 First Use In Commerce: 2012/08/01 Retail store services featuring beer, growlers, glassware, clothing and other beer-related merchandise		

U.S. Application No.	85870824	Application Date	03/08/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ALE YEAH!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2012/08/01 First Use In Commerce: 2012/08/01 retail store services featuring beer, growlers, glassware, clothing, and other beer-related merchandise		

Attachments	SKMBT_C20313060512330.pdf(1060414 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

Signature	/samuel b morrison/
Name	Samuel B. Morrison
Date	06/05/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/719231
Published in the Official Gazette: February 19, 2013

FRANCISCO VILA and)	
EDDIE HOLLEY)	
)	
Opposers,)	
)	Mark: ALE YEAH
v.)	
)	Opposition No.: _____
NICOLE VANNESS and)	
WILLIAM VANNESS)	
)	
Applicants.)	

NOTICE OF OPPOSITION

Francisco Vila and Eddie Holley (Opposers), individuals having principal places of business in the Atlanta, Georgia area, will be damaged by registration of the mark shown in Application Serial No. 85/719231 (the '231 application), and hereby oppose the same. The grounds for opposition are as follows:

1. Nicole VanNess and William VanNess (Applicants), individuals having a principal place of business at 426 Catalina Drive, Mooresville, North Carolina 28117, have filed, on a 1(b) Intent to Use application to register the mark ALE YEAH for beer mugs, beverage glassware, cups and mugs made of glass, porcelain, and non-precious metal, in International Class 021, and for athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; athletic shirts; baseball caps and hats;., gift packages sold as a unit consisting primarily

of a sweatshirt and also including a photo frame, a coffee mug and a tote bag; golf shirts; hats; hooded sweatshirts; party hats; polo shirts; shirts; shirts and short-sleeved shirts; short-sleeved shirts; sleep shirts; sport shirts; sports caps and hats; sweat shirts; T-shirts; toboggan hats, pants and caps, in International Class 025, as evidenced by publication of said mark in the February 19, 2013 issue of the Official Gazette.

2. Applicants filed the '231 application on September 3, 2012 under §1(b), based on intent to use the mark ALE YEAH. Upon information and belief, Applicants have not used the ALE YEAH mark thus far in commerce.

3. Opposers have been using the mark ALE YEAH! (and design) in connection with retail store services featuring beer, growlers (a type of beer container glassware bottle), glassware, clothing and other beer-related merchandise since at least August 1, 2012. Such uses include advertisements and articles in nationally distributed trade magazines, building signs, showcasing their retail store services at trade shows within the U.S., and advertising their retail services online, and soliciting orders thereby, all using the ALE YEAH! (and design) mark, plus the mark ALE YEAH! as a standard character mark.

4. Opposers are the applicants of U.S. Trademark Applications Nos. 85/871226 (ALE YEAH! and design), 85/870668 (ALE YEAH! CRAFT BEER MARKET and design), and 85/870824 (ALE YEAH!) for the mark ALE YEAH!, as a standard character mark, all for retail store services featuring beer, growlers (a type of beer container glassware bottle), glassware, clothing and other beer-related merchandise, in International Class 035.

5. Opposers' marks are known and recognized, and identifies to the public, especially those who are either beverage dealers or beer aficionados, that Opposers are the origin of the services and goods with which the marks are associated.

6. Opposers have built up valuable goodwill in their marks, and have expended considerable sums in advertising and publicizing said marks in association with Opposers' services.

7. The goods for which Applicants seek to register ALE YEAH are substantially similar to the goods which Opposers have sold while rendering their retail services, as Applicants' goods include growlers (a type of beer container glassware bottle), glassware, clothing and other beer-related merchandise.

8. Applicants' word mark is virtually identical (with the exception of an exclamation point appearing after Opposers' mark, and the inverted letter A in the word "Yeah") to Opposers' word mark, and the significant portion of Opposers' design marks.

9. In view of the fact that Applicants' word mark and Opposers' word mark are identical and used for goods that are sold in the rendering of Opposers' retail services, it is likely that distributors and purchasers of such goods will be confused into believing that Applicants' goods originate or are associated with Opposers. As a result, any perceived dissatisfaction with Applicants' goods provided under the ALE YEAH mark are likely to be erroneously attributed to Opposers, to substantial detriment of Opposers and of the goodwill that they have developed and enjoy in their ALE YEAH! mark, and its variants.

10. Applicants' use of ALE YEAH will cause confusion or mistake as to the origin of Applicants' goods and result in injury or threatened injury to Opposers and Opposers' common-law established rights in the ALE YEAH! mark.

11. Opposers have the right to maintain and continue the goodwill, reputation, and recognition which Opposers' marks ALE YEAH! have acquired without the confusion, deception, or misunderstanding that Applicants' registration of ALE YEAH will cause in the mind of purchasers as to the source of retail services with which Opposers' marks are associated.

12. Opposers have advertised their mark nationwide, via the internet, and in trade publications, and respectfully submit that they will be damaged by the registration of the identical mark as applied for by Applicants.

This Notice of Opposition is being submitted electronically and the fees required by 37 CFR 2.6(a)(17) in the amount of \$600.00 is submitted by way of credit card.

Respectfully submitted.

/Samuel B. Morrison/
Samuel B. Morrison
MORRISON LAW OFFICES, P.C.
Suite D
25 Atlanta Street
Marietta, Georgia 30060
(770)794-0399
Attorneys for Opposers

Date: June 5, 2013

Certificate of Service

I hereby certify that on the date indicated below the foregoing Notice of Opposition was served on the Applicants via first class mail in an envelope addressed as follows:

William VanNess
Nicole VanNess
426 Catalina Drive
Mooresville, North Carolina 28117

Date: June 5, 2013

/Samuel B. Morrison/
Samuel B. Morrison
Attorney for Opposer